Supreme Court, U.S.
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No. 05-237

In the

# Supreme Court of the United States

NEIL SABLAN TAISACAN,

Petitioner,

v.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,

Respondent.

**On Petition for Writ of Certiorari to the Supreme Court of the Commonwealth of the Northern Mariana Islands**

## BRIEF OF THE PETITIONER

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## QUESTIONS PRESENTED

1. Did the Supreme Court of the Northern Mariana Islands [hereafter "NMI Supreme court] err in ruling that the petitioner's right under the Double Jeopardy Clause of the Fifth Amendment was not violated, because, although petitioner's conviction of assault, assault and battery, and disturbing the peace arose from the same set of facts, occasion, time and place where felony counts charged were committed and the jury had first in the same proceeding found the petitioner not guilty of all such felony counts before the judge found the petitioner guilty of the misdemeanor charges, the principle of collateral estoppel does not apply?[1]

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[1] The NMI Supreme Court may have preempted the petitioner's federal rights when it changed the "Issues Presented For Review" of the petitioner from a question of a violation of the Double Jeopardy Clause of the Fifth Amendment to a violation of the Double Jeopardy Clause of the NMI Constitution. We maintain that the NMI Supreme Court had no right to change the issues for review presented by the appellant. In the appellant's [petitioner's] opening brief, the following was stated on page 4.

" ISSUES PRESENTED FOR REVIEW:

1. Did the conviction of Defendant Taisacan of assault and battery, assault, and disturbing the peace violate the Double Jeopardy Clause of the Fifth Amendment in view of the fact

2. Did the NMI Supreme Court err in ruling that the petitioner's right under the Due Process Clause of the Fourteenth Amendment was not violated when the Superior court found the petitioner guilty of assault, assault and battery, and disturbing the peace where the evidence as to the identity of the assailant was insufficient?[2]

3. Did the NMI Supreme err in ruling that the petitioner's right under the Double Jeopardy Clause of the Fifth Amendment to the U.S. Constitution was not violated when the Superior Court sentenced the petitioner to consecutive sentences for assault, assault and battery, and disturbing the peace where assault and assault and battery are arguably lesser-included offenses of disturbing the peace?[3]

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that the record of the trial shows that the jury's verdict of not guilty was based on the fact that the jury had a reasonable doubt that Defendant Taisacan was one of the two robbers who robbed and assaulted the victim?

2. Did the sentencing of Defendant for assault and battery, assault, and disturbing the peace for a total of 2 years violate the Double Jeopardy Clause?

3. Did the conviction of Defendant Taisacan of assault and batter, assault, and disturbing the peace violate the Double Jeopardy Clause [sic] for insufficiency of evidence."

[2] This issue is merely a rider. The main issue that really needs the attention of this Court is issue no 1.

[3] This issue is also a rider. We waive showing of reasons for granting of writ of certiorari.

## TABLE OF CONTENTS

Question Presented ..... i

Table of Authorities ..... iii

Statement of Jurisdiction ..... 1

Statement of Applicable Constitutional Provisions ..... 4

Statement of Facts ..... 5

Reasons for Granting the Writ ..... 8

I. THE DECISION OF THE NMI SUPREME SUPREME COURT IS IN CONFLICT WITH THE 6TH, 8TH, AND 11TH CIRCUIT COURTS OF APPEALS WITH RESPECT TO APPLICATION OF COLLATERAL ESTOPPEL AND WITH THIS COURT AND U.S. COURTS OF APPEALS ON THE RULE ON INSUFFICIENCY OF. EVIDENCE ..... 8

A. COLLATERAL ESTOPPEL ..... 8

B. INSUFFICIENCY OF EVIDENCE ..... 13

Conclusion ..... 18

Appendix ..... A-1 to A-29

## TABLE OF AUTHORITIES

**Cases**

*Ashe v. Swenson,* 397 US 436, 25 L Ed2d 468, 90 S Ct 1189 (1970) ..... 8

*Connecticut v. Knight,* 835 A.2d 47 (Conn. 2003) ..... 10

*Copening v. United States,* 353 A.2d 305 (D.C. 1976) .. 10

*Galloway v. State,* 809 A2d 653 (Md. 2002) ..... 11

*Garza v. City of Omaha,* 814 F2d 553 (8th Cir. 1987)... 11

*Gutzwiller v. Fenik,* 860 F2d 1217 (6th Cir. 1988) ..... 10

*Jackson v. Virginia,* 443 US 207, 61 L Ed2d 560, 99 S Ct 2781 (1979) ..... 14

*Lincoln v. Board of Regents of Univ. System,* 697 F2d 928 (11th Cir. 1983) ..... 11

*Mikes v. Borg,* 947 F2d 353 (9th Cir. 1991) ..... 17

*United States v. Bishop,* 959 F2d 820 (9th Cir. 1992) .. 17

*United States v. Dinkane,* 17 3d 1192 (9th Cir. 1994) ... 17

*United States v. Fulbright,* 105 F3d 443 (9th Cir. 1997) .. 17

*United States v. Lopez-Alvarez,* 970 F2d 583 (9th Cir. 1992) .....17

*United States v. Oppenheimer,* 242 US 84,

61 L.Ed. 161, 37 S Ct 68[illegible]16) ..... 12

**Other Authorities**

Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America [U.S. P.L. 94-241, 90 Stat. 263, 48 USCS §1681] :

Section 403(a) ..... 1

Commonwealth Code:

1 CMC §3102(a) ..... 2
3 CMC §3102(a) ..... 3

United States Code Service:

28 USCS §1257(3) ..... 3

## STATEMENT OF JURISDICTION

This petition for a writ of certiorari is made by reason of the fact that the NMI Supreme Court entered its decision on June 23, 2005 affirming the Superior Court's judgment of conviction of the petitioner and the decision was entered on the same day at 11:15 AM.

No petition for rehearing was filed in this case.

This Court has jurisdiction over this petition for certiorari pursuant to Section 403(a) of the Covenant To Establish A Commonwealth of the Northern Mariana Islands In Political Union With the United States of America [hereafter "Covenant"] (U.S. P.L. 94-241, 90 Stat. 263, 48 USCS §1681) which states in part:

> (a) The relations between the courts established by the Constitution or laws of the United States and the courts of the Northern Mariana Islands with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus and other matters or proceedings will be governed by the laws of the United States pertaining to the relations between the courts of the United States and the courts of the

> several States in such matters and proceedings, except as otherwise provided in this Article; provided that for the first fifteen years following the establishment of an appellate court of the Northern Mariana Islands the United States Court of Appeals for the judicial circuit which includes the Northern Mariana Islands will have jursdiction of appeals from all final decisions of the highest court of the Northern Mariana Islands from which a decision could be had in all cases involving the Constitution, treaties or laws of the United States, or any authority exercised thereunder, unless those cases are reviewable in the District Court for the Northern Mariana Islands pursuant to Subsection 402(c).

On May 2, 1989, the Commonwealth Judicial Act of 1989 became effective. This law established the Supreme Court of the Northern Mariana Islands as an appellate court of the Northern Mariana Islands. See 1 CMC §3101, which states:

> There is hereby established, in the judicial branch of the Commonwealth Government, the Supreme Court of the Commonwealth of the Northern

> Mariana Islands. Admissions to the Bar are to be governed by the Supreme Court.

3 CMC §3102(a) gives appellate jurisdiction to the Supreme Court. It states:

> (a) The Supreme Court has appellate jurisdiction over judgments and orders of the Superior Court of the Commonwealth.[1]

The fifteen years having elapsed, this Court now has jurisdiction pursuant to Section 403(a) of the Covenant which makes 28 USCS §1257(3) applicable. Said statute states:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may

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[1]The term "CMC" means Commonwealth Code. The Commission in the Commonwealth code comment states in part: "...It is the intent of the legislature to recognize that until the expiration of fifteen years after the enactment of Public 1-5 final decisions of the Commonwealth Supreme Court will be appealable to the United States Courts of Appeals for the Ninth Circuit Court as is provided by Section 403(a) of the Covenant, and that upon the expiration of that period all final decisions of the Supreme Court will be appealable thereafter only to the United States Supreme Court."

be reviewed by the Supreme Court as follows:

.....

(3) By writ of certiorari ... where any title, right, privilege or immunity is specially set up or claimed under the Constitution .... See *Hammerstein v. Superior Court of California,* 341 US 491, 95 L Ed 1135, 71 S Ct 820 (1951).

## STATEMENT OF RELEVANT CONSTITUTIONAL PROVISIONS

The Double Jeopardy Clause of the Fifth Amendment to the U.S. Constitution states in part:

> ... nor shall any person be subject for the same offence to be twice put in jeopardy of life and limb; ...

Section 1 of the Fourteenth Amendment to the U.S. Constitution which also makes the Double Jeopardy Clause applicable to the States states in part:

> ... nor shall any State deprive any person of life, liberty, or property without due process of law...

Section 501(a) of the Covenant [U.S. P.L. 94-241, 90 Stat. 263, 48 USCS §1681] states in part:

> (a) To the extent that they are not applicable of their own force, the following provisions of the Constitution of the United States will be applicable within the Northern Mariana Islands as if the Northern Mariana Islands were one of the several States: ... Amendment 14, Section 1; ....

## STATEMENT OF FACTS

At about 11:00 PM of October 29, 2000, Song Yong Tae was throwing trash into the trash box behind his laundry shop when two male persons came and robbed him. One grabbed him from behind. The other, holding a gun and wearing a baseball cap, was facing him. TP 39/18-21 (vol. I). Mr. Song testified that he saw the face of the person who was wearing a hat and holding a gun. TP 44/5-9 (Vol. I). His testimony shows no description of the second person who was headlocking him behind his back. According to him, the man with a hat and a gun had a long face. TP 82/24-25 (Vol. I). A few hours after the robbery, Mr. Song told Police Officer Inosinta Sound that the man with the gun was a skinny young man, and had a long face, and he was able to hold the man's skinny wrist. TP 103/1-9 (Vol. I). But Petitioner Neil Sablan had a round face, he was fat, and he had big wrists. TP 338/1-12 (Vol I).

In the early hours of October 30, 2000, the police arrested all the defendants (Baldobino Taisacan, Joaquin R. Crisostomo, and Neil Sablan Taisacan) and later their pictures were taken. TP 35/24-27 (Vol. II). On or about November 27, 2000, Mr. Song was shown photos of several persons, including those of the defendants (Baldobino Taisacan, Joaquin R. Crisostomo and Neil Sablan Taisacan). TP 21/9-27 (Vol II); TP 37/1-10 (Vol II). Mr. Song identified the picture of Joaquin R. Crisostomo as the man he saw robbing him and holding a gun on him on the night of the robbery. TP 39/10-17. He did not identify Neil Taisacan or the third defendant in the photos. TP 38/21-24 (Vol II).

However, during the trial, Mr. Song pointed to Defendant Neil Sablan Taisacan as the person who was robbing him and holding a gun on him on the night of the robbery. TP 62/10 (Vol. I).

The defendants were tried for robbery, attempted murder, theft, assault with a dangerous weapon, two counts of unlawful carrying of a firearm, criminal use of a firearm, two counts of illegal possession of a firearm, possession of a prohibited firearm, possession of a prohibited ammunition, illegal possession of ammunition, assault and battery, assault, and disturbing the peace.

The trial was held with the jury determining guilt or innocence on the felony charges, while in the

same proceeding the judge was to determine guilt or innocence on the misdemeanor charges such as assault and battery, assault, and disturbing the peace.

At the end of the trial, the jury entered verdicts of not guilty as to all felony charges against the petitioner. And then the judge entered verdicts of guilty against the petitioner on the misdemeanor charges of assault and battery, assault, and disturbing the peace.

Petitioner subsequently moved that the court vacate its judgment of conviction on the misdemeanor charges and dismiss the charges of assault and battery, assault, and disturbing the peace on the ground that such judgment of conviction violated the Defendant's right under the Double Jeopardy Clause of the Fifth Amendment to the U.S. Constitution, made applicable to the CNMI through the Fourteenth Amendment to the U.S. Constitution. The court denied the motion.

On August 8, 2003, the court then sentenced Petitioner Neil Taisacan to one year imprisonment for assault and battery, six months for assault, and six months for disturbing the peace. All terms were to run consecutively.[2]

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[2] The petitioner is still serving that sentence. Additionally, because of this conviction, his suspended sentence in a previous conviction has been revoked and he is in jail for imprisonment for a lot longer sentence than his consecutive sentences in this case.

The petitioner timely appealed to the NMI Supreme Court his conviction, his sentence, and the court's denial of his motion to dismiss on the ground that his right to Double Jeopardy Clause of the 5th Amendment to the U.S. Constitution. On June 23, 2005, the NMI Supreme Court affirmed the decisions of the Superior Court ruling inter alia that the principle of collateral estoppel does not apply to inconsistent judgments made in the same proceeding.

## REASONS FOR GRANTING THE WRIT

### I

### THE DECISION OF THE NMI SUPREME COURT IS IN CONFLICT WITH THE 6TH, 8TH, AND 11TH CIRCUITS OF APPEALS WITH RESPECT TO THE APPLICABILITY OF COLLATERAL ESTOPPEL AND WITH THIS COURT AND OTHER FEDERAL COURTS ON THE RULE ON SUFFICIENCY OF EVIDENCE.

#### A

#### Applicability of Collateral Estoppel

In a landmark decision, this Court in *Ashe v. Swenson,* 397 US 436, 25 L Ed2d 468, 90 S Ct 1189 (1970), established the applicability of the common law principle of collateral estoppel in criminal cases. This Court there said that the common law principle of collateral estoppel "is a part of the Fifth Amendment's guarantee against double jeopardy". 397 US at 442, 25 L Ed2d at 475, 90 S Ct at 1193. And where collateral estoppel "is embodied in that guarantee, then its applicability is no longer a matter to be left for state court determination within the broad bounds of 'fundamental fairness', but a matter of constitutional fact that [must be decided] through an examination of the entire record". 397 US at 442-443, 25 L Ed 2d at 475, 90 S Ct at 1194.

Collateral estoppel means simply "that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." 397 US at 443, 25 L Ed2d at 475, 90 S Ct at 1194. In determining an issue that may or may not be covered by collateral estoppel, this Court guides us by saying:

> ... Where a previous judgment of acquittal was based upon a general verdict, as is usually the case, this approach requires a court to "examine the record of a prior proceeding, taking into account the pleadings, evidence, charge, and

> other relevant matter, and conclude *whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration.*" (Emphasis supplied)

397 US at 444, 25 L Ed2d 475, 90 S Ct at 1194.

How far in time does the first judgment from the second judgment have to be in order that collateral estoppel can be applied? This is the issue in this case.

On one hand, the CNMI Supreme Court relied on two state court cases to rule that when two judgments, one by the jury and one by the judge, are made in the same proceeding, the principle of collateral estoppel does not apply. See *Copening v. United States*, 353 A2d 305 (D.C. 1976) and *Connecticut v. Knight*, 835 A2d 47 (Conn. 2003).

On the other hand, the U.S. Courts of Appeals for the 6th Circuit, 8th Circuit, and 11th Circuit have clearly established precedents that the principle of collateral estoppel may apply to two judgments in the same proceeding.

In *Gutzwiller v. Fenik,* 860 F2d 1217 (6th Cir. 1988), the jury and the judge were involved in the same trial where the jury was to decide on the legal claim under a §1983 discrimination claim and the

judge was to decide on Title VII equitable claim. The jury found that plaintiff was discriminated by the defendants, but in deciding the Title VII claim which also required a finding of discriminatory intent, the district court judge dismissed the plaintiff's claim under Title VII finding no discrimination.

The 6th Circuit Court of Appeals, in reversing the district court, said that "when the section 1983 claim and the Title VII claim *are tried jointly, as they were here, the principle of collateral estoppel controls*." (Emphasis supplied). 860 F2d at 1333. Thus, "the trial judge was bound by the jury's express finding of liability as to Fenik and Cohen on the section 1983 equal protection claim, and was 'without power' to reach a conclusion inconsistent with that of the jury."[3] 860 F2d at 1983.

In *Lincoln v. Board of Regents of Univ. System,* 697 F2d 928, 934 (11th Cir. 1983) the 11th Circuit said "When a party has the right to a jury trial on an issue involved in a legal claim, the judge is of course bound by the jury's determination of that issue as it affects his disposition of an accompanying equitable claim."

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[3] The NMI Supreme Court attempted to distinguish this instant case from *Gutzwiller, Garza,* and *Lincoln,* supra, by saying that the jury in a criminal case does not make any findings of fact, while the jury in a civil case makes a findings of fact. We don't know how true that is, but *Ashe* has clearly commanded that the reviewing court must look to record of the entire case.

The U.S. Court of Appeals for the 8th Circuit follows the same principle that collateral estoppel applies to two inconsistent judgments in the same proceeding. See *Garza v. City of Omaha*, 814 F2d 553 (8th Cir. 1987).

The Court of Appeals of Maryland in *Galloway v. State*, 809 A2d 653 (2002), agrees in principle of the applicability of collateral estoppel in a criminal case where the jury was deciding felony charges and the judge was deciding on misdemeanor charges, except that the court couched its decision by calling collateral estoppel as inconsistent verdicts and avoiding any constitutional interpretations.

While it is true that the U.S. courts of appeals were deciding on civil cases in the above-mentioned cases, this Court in *Ashe*, supra, has clearly held with strong emphasis that there is no difference between criminal cases and civil cases when it comes to the application of the principle of collateral estoppel. This Court made that clear when it cited its previous decision in *United States v. Oppenheimer*, 242 US 84, 61 L Ed 161, 37 S Ct 68 (1916) where this Court said that "the criminal law is in unison with that which prevails in civil proceedings," and that "... the 5th Amendment was not intended to do away with what in the civil law is a fundamental principle of justice." 242 US at 88, 61 L Ed at 164.

Clearly, there is a very serious conflict between the 3 state court's decisions and the U.S. circuit courts of appeals decisions on the issue of collateral estoppel. This conflict can widen and exacerbate unless this Court steps in and decides on this issue.

The issue on Double Jeopardy guaranteed by the Fifth Amendment to the U.S. Constitution is a very important question of federal law. This Court has not yet settled the issue of whether collateral estoppel could be applied with respect to inconsistent verdicts by jury and the judge occurring in the same proceeding. And already some state courts have already gone one hundred eighty degrees away from the principles established by the U.S. circuit courts of appeals, whose decisions on questions of federal law should have been honored and followed.

Moreover, to let those state courts' rulings stand on the inapplicability of collateral estoppel on judgments made in the same proceeding makes a mockery of the principle of guilt beyond a reasonable doubt, since a jury's verdict, for instance, inferring that the accused was not present at the scene of the crime at the time it was committed would collide with judge's finding that the accused was present at the scene of the crime at the time it was committed. This situation logically puts into question whether the defendant has really been found guilty beyond a reasonable doubt.

B

SUFFICIENCY OF EVIDENCE

The CNMI Supreme Court did not cite any authority from the federal courts or even other state courts to support its decision that the petitioner's right under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution was not violated when he was convicted with insufficient evidence.

The court merely stated in simplistic way that there was some evidence, namely: (a) the victim identifed the petitioner at trial, (b) the stories of the defendants in a poker establishment shortly after the crimes were committed did not match up as to how they got there, (c) the car they drove matched the license place number an eyewitness to the getaway gave to the police, (d) At trial, the victim identified a revolver and a hat, worn by Taisacan, seized from the car.

While the NMI Supreme Court uses the language of this Court in *Jackson v. Virginia,* 443 US 307, 61 L Ed2d 560, 99 S Ct 2781 (1979) which says:

> ... the relevant question is whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact

> could have found the essential elements of the crime beyond a reasonable...

443 US at 319, 99 S Ct at 2789, 61 L Ed2d at 573, in reality it still clings to the past practice long rejected by this Court, which is that if there is any evidence, no matter how dubious, that the defendant is guilty, then the reviewing court will not disturb the findings of the trial court.

On the issue of identity of the robbers, the victim had the opportunity to look at the photos of all the defendants 30 days after the crime was committed. He identified the photo of co-defendant Joaquin Crisostomo as the man with the baseball cap who held a gun on him. He could not identify the person headlocking him from behind. A few hours after the robbery, he described the man with the baseball cap who held a gun on him as a skinny young man with a skinny wrist and had a long face.

The evidence which the prosecution could not refute is that the petitioner had a round face, was fat and he had big wrists.

These early descriptions of the man with the gun made by the victim himself created a reasonable doubt as to whether the victim's identification of the petitioner as the man with the gun during trial was correct.

The NMI Supreme Court's statement that the stories of the defendants as to how they got to poker establishment shortly after the crimes were committed did not match does not prove that the petitioner was the person who robbed the victim.

The court also said that the evidence that "the car they drove matched the license plate number an eyewitness to the getaway gave to the police" does not prove that the petitioner was in the getaway car, because the witness could not identify the persons inside the car. The petitioner did not own the car. There was no evidence that he was the driver of the car.

The court also said that "at trial, the victim identified a revolver and a hat, worn by Taisacan, seized from the car." This is not a correct statement of the evidence. The evidence is that the car which was parked at a poker establishment hours after the crimes were committed were taken by the police to the police station and was opened, And there they saw a revolver similar to the one used by the man with the gun. They saw a small baseball cap, similar to the one worn by the man with the gun. There was no evidence that the petitioner wore the cap except the dubious identification by the victim of petitioner as the man with the gun.

There is no doubt that the NMI Supreme Court has decided a federal question, in a way, in conflict with applicable decisions of this Court and

decisions of the 9th Circuit of Appeals where the CNMI belongs. In *Jackson,* supra, this Court said:

> ... The question of whether a defendant has been convicted upon *inadequate evidence* is central to the basic question of guilt or innocence. The constitutional necessity of proof beyond a reasonable doubt is not confined to those defendants who are morally blameless. E.g. Mullaney v. Wilbur, 421 US, at 697-698, 44 L Ed2d 508, 95 S Ct 1881 (requirement of proof beyond a reasonable doubt is not "limited" to those facts which, if not proved, would wholly exonerate the accused). Under our system of criminal justice even a thief is entitled to complain that he has been unconstitutionally convicted and imprisoned as a burglar. (Emphasis supplied).

443 US at 323, 99 S Ct at 2791, 61 L Ed2d at 576.

The NMI Supreme Court's decision in this case represents a substantial departure from the decisions of this Court and those made by the 9th Circuit in *United States v. Fulbright,* 105 F3d 443 (9th Cir. 1997), *United States v. Dinkane,* 17 F3d 1192 (9th Cir. 1994), *Mikes v. Borg,* 947 F2d 353 (9th Cir. 1991), *United States v. Bishop,* 959 F2d

820 (9th Cir. 1992). *United States v. Lopez-Alvarez*, 970 F2d 583 (9th Cir. 1992).

This Court needs to clarify for the sake of the young NMI Supreme Court that the teaching of *Jackson v. Virginia*, supra, including explanation and illustration thereof, should be followed strictly.

## CONCLUSION

The petitioner therefore prays that this Court grant him a writ of certiorari to the NMI Supreme Court and decide the merits of his appeal.

Dated this 17th day of August, 2005.

Respectfully submitted,

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IN THE
SUPREME COURT
OF THE COMMONWEALTH
OF THE NORTHERN MARIANA ISLANDS

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COMMONWEALTH OF THE NORTHERN
MARIANA ISLANDS

*Plaintiff-Appellee,*

v.

JOAQUIN REYES CRISOSTOMO and
NEIL SABLAN TAISACAN,

*Defendants,*

NEIL SABLAN TAISACAN,
Defendant-Appellant.

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Supreme Court Appeal No. 03-0026-GA
Superior Court Criminal Case No. 00-0523A

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# OPINION

Cite as: Commonwealth v. Tasacan, 2005 MP 09

Argued and submitted on March 1, 2005
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BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; JOHN A. MANGLONA, Associate Justice

DEMAPAN, Chief Justice:

Defendant-Appellant Neil Sablan Taisacan ("Taisacan") appeals from the trial court's orders convicting and sentencing him on felony charges after a jury acquitted him of misdemeanor charges in the same proceeding. [sic]. Taisacan argues that the trial court erred because the conviction and sentencing violate the prohibition against double jeopardy and there was sufficient evidence to convict him. Becase we find no double jeopardy violation and that there was sufficient evidence to convict Taisacan, the trial court's decision is affirmed.

I.

Yong Tae Song ("Song") operates the Marianas Washland laundromat in Chalan Kanoa. On October 29, 2000, Song was robbed at about 11:00 p.m. behind his laundromat. One robber grabbed Song from behind. The other, holding a gun and wearing a baseball cap, faced him.

Lori Benhart ("Benhart") and Francisca Abraham ("Abraham") were outside Abraham's house in Chalan Kanoa at around 11:00 p.m. Abraham saw a car parked in front of the Life Restaurant. She then saw two or three men get out of the car and walk down a small road that leads to the Marianass Washland. Ten or fifteen minutes later, she saw them run back to the car. At that point, Abraham went inside her house.

Benhart witnessed a Toyota Celica, the same car seen by Abraham, drive through the neighborhood three times. The car parked near the Life Restaurant, and three men got out of the car and ran down the path toward the laundromat. She noticed that one of them carried a backpack that had a long object protruding from it. After twenty or thirty minutes, she saw the men run back from the road leading to the laundromat. Benhart then witnessed two men get into the car and pull away, stopping near Abraham's house to pick up the third man. Benhart wrote down the license plate number of the car and gave it to the police. Benhart recognized a photograph of t[illegible]ar at trial.

Officer Patrick Maanao arrived on the scene and received the license plate number from Benhart. He relayed the license place information and description of the car to other patrol cars.

Office Michael Langdon went to the area where Song was robbed and saw the small road that leads from the laundromat to the neighborhood. He also received the license plate information over the police radio. Shortly after midnight, Officer Langdon saw the suspects' Celica parked near the Nang Ocha store in San Vicente. He radioed the location to other officers, parked behind the Celica, walked to the front of it, and placed his hand on the hood. He felt that the hood was very warm. Langdon looked inside the car and saw a black, wooden rifle stock on the floorboard of the passenger side.

Detective Jesus Cepeda and Officers Gordon Salas and Sylvanda Reyes arrived at the scene and went into a nearby poker establishment to try to locate the operator of the Celica. Detective Cepeda came out from the poker room with Joaquin Crisostomo ("Crisostomo"). Cristostomo said he was with his brothers-in-law, Badobino Taisacan

("Badobino") and Neil Taisacan ("Taisacan"). Crisostomo denied operating the car. Detective Cepeda asked Crisostomo if he would consent to a search of the car. Crisostomo refused and said that the car belonged to his wife. Yvonne Taisacan, who lived with Crisostomo, testified that the Celica is registereed to her mother, but that the car was bought for her. She also testified that on the night of the crime, her brother Badobino woke her up and asked to borrow the car and she gave the keys to him.

Detective Cepeda questioned Badobino, who said that Crisostomo had picked up he [sic] and Taisacan at his mother's house and they arrived at the poker room at about 8:00 p.m.

Taisacan also came out of the poker room and Officer Langdon asked him if he was together with Crisostomo. Taisacan denied being with Crisostomo, and said he and Badobino had walked over from their house.

Detective Juan Santos conducted an inventory search of the Celica on October 30, 2000, the day after the crime took place. He found: a black wooden stock for a .22 rifle, the trigger housing upper receiver with magazine for a .22 rifle, ammunition for a .22 rifle, a black sixteen-inch barrel, a .38 caliber revolver, and .38 caliber ammunition. Song recognized the revolver seized from the Celica as the one pointed at his face during the attack. He also identified a hat seized from the car.

On October 30, 2000, the police arrested Taisacan, Badobino, and Crisostomo and later their pictures were taken. On November 27, 2000, Song was shown photos of several persons, including those of Taisacan, Badobino, and Crisostomo. Song identified Crisostomo in the pictures. He did not identify Taisacan or Badobino in the pictures. During

the trial, however, Song pointed to Taisacan as the person who robbed him and held a gun on the night of the robbery.

Taisacan, Badobino, and Crisostomo were charged with the felonies: attempted murder, armed robbery, theft, assault with a dangerous weapon, two counts of unlawful carrying of a firearm, criminal use of a firearm, two counts of illegal possession of a firearm, possession of a prohibited firearm, possession of prohibited ammunition, and illegal possession of ammunition, and misdemeanor charges of assault and battery, assault, and disturbing the peace. All of the felony charges were decided by the jury. The misdemeanor charges of assault and battery, assault, and disturbing the peace were decided by the trial judge.

On May 30, 2003, the jury found Taisacan not guilty of the felony charges.[1] The trial judge found Taisacan guilty of the misdemeanor charges of assault and battery, assault, and disturbing the peace.[2]

On June 30, 2003, Taisacan filed a motion to vacate the guilty verdict and dismiss the misdemeanor counts. He argued that based on "the Double Jeopardy Clause of the 5th Amendment to the U.S. Constitution, the court had no jurisdiction to enter a judgment inconsistent with that of the jury."[3] The trial court denied the motion.[4]

On August 8, 2002, the trial court sentenced Taisacan to one year imprisonment for assault and battery, six months

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[1] Judgment of Conviction as to Defendant Neil Sablan Taisacan, entered May 30, 2003.
[2] Id.
[3] Defendant Neil Taisacan's Motion To Vacate Guilty Verdict and to Dismiss Misdemeanor Counts, filed June 30, 2003.
[4] Order Denying Motion To Vacate and Dismiss, entered July 31, 2003.

for assault, and six months for disturbing the peace.[5] All terms were to run consecutively.[6] Taisacan timely filed an appeal.[7]

II.

This Court has jurisdiction pursuant to Article IV, Section 3 of the Commonwealth Constitution and 1 CMC §3102(a).

The issues presented and their respective standards of review are:

> 1. Whether the Double Jeopardy Clause of the C.N.M.I. Constitution[8] [sic] was violated when the trial judge convicted Defendant Taisacan for the misdemeanors assault and battery, assault, and disturbing the peace after the jury had found Taisacan not guilty of the felonies charged in the same trial. This issue is subject to de novo review.[9]
>
> 2. Whether the offenses of assault and assault and battery are lesser-included offenses of disturbing the peace, and thus did the sentencing of Defendant Taisacan

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[5] Sentence and Commitment Order as to Defendant Neil Sablan Taisacan, entered August 8, 2003.
[6] Id.
[7] Taisacan also filed a Motion For Bail Pending Appeal on May 6, 2005 and the Commonwealth filed a response to the motion. Since the Court is rendering this opinion, this motion is now moot.
[8] N.M.I. Const. art. I, §4(e).
[9] *Commonwealth v. Oden*, 3 N.M.I. 186, 191 (1992).

for assault and battery, assault, and disturbing the peace violated the Double Jeopardy Clause. These questions of law are reviewed *de novo.*[10]

3. Whether the evidence was sufficient to convict Defendant Taisacan for assault and battery, assault, and disturbing the peace. "We review sufficiency of the evidence in a criminal case by determining whether, after reviewing the evidence in the light most favorable to the prosecution, any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt."[11]

IV.

Taisacan argues that the prohibition against double jeopardy was violated because the trial judge found Taisacan guilty of the misdemeanor charges after the jury found him not guilty of the felony charges. According to Taisacan, assault and assault and battery are lesser-included offenses of disturbing the peace, thus his conviction for all three offenses also violated the prohibition against double jeopardy. Finally, Taisacan argues that there was insufficient evidence to find him guilty.

The Commonwealth argues that the prohibition against double jeopardy was not violated, since double jeopardy only applies when there are multiple trials and here

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[10] *Commonwealth v. Kaipat*, 4 N.M.I. 300, 3003 n.10 (1995). *Oden*, 3 N.M.I. at 191.

[11] Id. at 191 (citations omitted).

there was only one. The Commonwealth also asserts that neither assault nor assault and battery are lesser-included offenses of disturbing the peace. Finally, the Commonwealth argues that there was sufficient evidence to find Taisacan guilty.

**A. Double jeopardy is not violated when the jury acquits and the judge convicts on different charges in single proceeding.**

The Double Jeopardy Clause in our Constitution provides as follows: "No person shall be put twice in jeopardy for the same offense regardless of the governmental entity that first institutes prosecution."[12]

This Court has previously explained that "[o]ur double jeopardy clause is patterned after the Double Jeopardy Clause of the U.S. Constitution."[13] The Double Jeopardy Clause of the U.S. Constitution is made applicable to the Commonwealth through the Covenant.[14] In our analysis of cases involving double jeopardy issues, we "resort to federal case law which interprets the U.S. Constitution's Double Jeopardy Clause to ensure that our interpretation of the Constitution's double jeopardy provision provides at least the same protection granted defendants under the federal Double Jeopardy Clause."[15]

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[12] N.M.I. Const., art. I, §4(e).
[13] *Oden*, 3 N.M.I. at 206 (footnote omitted).
[14] *Oden*, 3 N.M.I. at 206 (footnote omitted). See COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNTION WITH THE UNITED STATES OF AMERICA, Section 501(a). 48 U.S.C. 1801 note, reprinted in CMC at XXXi, et seq.
[15] *Oden*, 3 N.M.I. at 206 (citations omitted).

It is important to note the distinction between the double jeopardy and collateral estoppel. They are "related but analytically distinct": double jeopardy prohibits the reprosecution of the *same offense* and collateral estoppel deals with the relitigation of the same *factual issue*.[16] Clearly there was no double jeopardy issue here, since the statutes establish different offenses and Taisacan was only prosecuted once for each offense.

Nonetheless, the U.S. Supreme Court has held that collateral estoppel is provided under the Fifth Amendment prohibition against double jeopardy. "The ultimate question to be determined, then ... is whether [the] established rule of federal law [collateral estoppel] is embodied in the Fifth Amendment guarantee against double jeopardy. We do not hesitate to hold that it is."[17]

The *Ashe* court also explained that:

> [c]ollateral estoppel is an awkward phrase, but it stands for an extremely important principle in our adversary system of justice. It means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit.[18]

Cases with similar procedural situations to the case at bar have upheld judge-determined convictions where juries acquitted defendants of separate charges. For example, in

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16 *Copening v. United States*, 353 A.2d 305, 308 n. 6 (D.C. 1976).
17 *Ashe v. Swenson*, 397 U.S. 436, 445, 90 S.Ct. 1189, 1195, 25 L.Ed.2d 469, 476 (1970).
18 *Ashe*, 397 U.S. at 443, 90 S.Ct. at 1194, 25 L.Ed.2d at 475.

*Copening v. United States,*[19] the defendant was acquitted by a jury on the statutory charge but found guilty by the trial judge on each regulatory charge. The District of Columbia Court of Appeals held in *Copening* that the doctrine of collateral estoppel did not apply because the defendant had been "tried in a single proceeding, in which the adjudications as to his guilt were to be rendered by concurrent as opposed to successive triers."[20]

The District of Columbia Court of Appeals found that collateral estoppel did not apply to this situation:

> The existence of a prior judgment has been described as the "Linchpin" of [*Ashe v. Swenson*], and subsequent case law has stressed the requirement of a previous trial. Because of the nature of the trial in this case, we conclude that there was no "prior adjudication" which would mandate application of the collateral estoppel doctrine.[21]

The *Copening* court did not accept appellant's argument that in effect there were two trials:

> It is appellant's position that merely because the jury announced its verdict on the statutory charge before the trial court pronounced judgment on the regulatory offenses, the jury's determinations constituted a "prior judgment" sufficient to

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19 *Copening*, 353 A.2d 305 (D.C. 1976).
20 Id. at 310,
21 Id. (citations and footnore omitted).

> compel collateral estoppel relief. We disagree. Both decisions were announced in the same proceedings, one immediately following the other. More importantly, despite the existence of two triers, the trial was in fact a single, unified hearing. The adversaries were required to present their cases but a single time. Both triers were exposed simultaneously to the same evidence and arguments, and they reached their respective conclusions through simultaneous, albeit, separate, deliberations. We therefore do not accept appellant's assertion that the existence of two triers rendered the proceeding, in effect, "two trials."[22]

In the case at bar, Taisacan emphasized that the trial judge convicted him of the misdemeanor charges after the jury had handed down its findings of not guilty on the felony charges. This detail is insignificant, for trial judges could simply enter their findings of guilt or innocence before a jury's findings and avoid this scenario. But as explained in *Copening*, timing should not affect the applicability of collateral estoppel:

> The trial judge correctly noted that he would have been able to announce his conclusions as to the regulatory offenses before the jury returned its verdict ... The answer, of course, is that the traditional concern of the collateral estoppel doctrine is not with the outcome of a decisional race

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[22] Id. at 310-11 (citations and footnote omitted).

> between different triers, but with the need to protect a party from the rigors of twice litigating the same issue.[23]

The court framed the issue as "whether the collateral estoppel principles enunciated in *Ashe v. Swenson* (and its progeny) should be extended to govern the procedurally unique situation in which several criminal charges against the same defendant have been allocated between two triers for concurrent adjudication upon virtually identical evidence.[24] The court concluded "that they should not."[25]

This rationale was also adopted recently by the Supreme Court of Connecticut in *Connecticut v. Knight.*[26] "We find the reasoning of *Copening* persuasive, and adopt it in the present case."[27] The *Knight* court concluded that "the defendant's criminal trial was a single proceeding, and therefore that the doctrine of collateral estoppel does not apply."[28]

Similar issues were recently brought before the Court of Appeals of Maryland in *Galloway v. Maryland,*[29] which Taisacan relies on in support of his argument. His reliance is misplaced, as *Galloway* found the trial court "created

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[23] Id. at 310 n.10 (citing *Ashe,* 397 U.S. at 445-47, 90 S.Ct. at 1195-96, 25 L.Ed.2d at 476-78; *Green v. United States,* 355 U.S. 184, 187-90, 78 S.Ct. 221, 223-25, 2 L. Ed.2d 199, 204-06 (1957).
[24] Id. at 312.
[25] Id.
[26] *Connecticut v. Knight,* 835 A.2d 47 (Conn. 2003)
[27] *Id. at 52*
[28] Id. at 53.
[29] *Galloway v. Maryland,* 809 A2d 653 (Md. 2002)

improper inconsistent verdicts"[30] and was not decided on double jeopardy grounds.

The court made this clear, stating: "[w]hile we do not necessarily agree that double jeopardy violations can only occur in subsequent litigation, *under the facts of this case we shall not directly rely on double jeopardy principles but on Maryland common law principles.*"[31] The court reiterated this point later in the opinion: "[w]e shall reverse for other reasons, that we shall hereafter discuss. In doing so, *we will not directly reach the constitutional issue of double jeopardy or constitutional collateral estoppel.*"[32]

Taisacan also cites several Title VII cases in support of his argument that judges are bound by jury determinations of liability and cannot reach inconsistent conclusions. In those cases, the plaintiff has a legal right to a jury trial for the legal claim under 28 U.S.C. §1983 and the jury decides the legal issues concerning damages. The judge rules on the equitable Title VII claims concerning reinstatement and back pay based on the findings of the jury.

These cases are unpersuasive, since in the case at bar there were no findings of fact made by the jury that the trial judge was bound to. Taisacan was acquitted of felonies which have elements that differ from the misdemeanors he was convicted of, and since the jury was only asked to find Taisacan "guilty" or "not guilty" of the offenses it is impossible to determine what factual findings were made by the jury. Furthermore, accepting Taisacan's position would adversely affect the independence of the judge's

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[30] Id. at 675.
[31] Id. at 660 (emphasis added.)
[32] Id. at 662 (emphasis supplied).

determination of guilt or innocence for minor criminal offenses that are tried by judges rather than juries.[33]

We hold that there was no double jeopardy violation here, where the trial judge convicted Taisacan and the jury acquitted him or different charges in the same proceeding.

**B. Assault and assault and battery are not lesser-included offenses of the crime of disturbing the peace.**

This Court has stated that "[a]n offense is a lesser included offense if its elements 'are a subset of the charged offense.' This determination is accomplished by a textual comparison of the pertinent statutes."[34]

Thus a textual comparison of the disturbing the peace, assault, and assault and battery statutes is necessary. The text of the relevant statutes read as follows:

> Disturbing the Peace:
>
> > (a) A person commits the offense of disturbing the peace if he or she unlawfully and willfully does any act which unreasonably annoys or disturbs another person so that the other person is deprived of his or her right to peace and quiet, or which provokes a breach of the peace.
> > (b) A person is convicted of disturbing the peace may be punished by

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33 "[C]alling for a jury trial upon all of the charges not only would be undesirable in that it would usurp the trial court's traditional authority over minor regulatory offenses, but it also would contravene the specific statutory command that minor offenses shall be tried by a judge rather than before a jury." *Copening*, 353 A.2d at 312-13 (citation omitted).

34 *Kaipat*, 4 N.M.I. at 303 (citations omitted).

> imprisonment for not more than six months.[35]

Assault:

> (a) A person commits the offense of assault if the person unlawfully offers or attempts, with force or violence, to strike, beat, wound, or to do bodily harm to another.
> (b) A person convicted of assault may be punished by imprisonment for not more than six months.[36]

Assault and Battery

> (a) A person commits the offense of assault and battery if the person unlawfully strikes, beats, wounds, or otherwise does bodily harm to another, or has sexual contact with another without the other person's consent.
> (b) A person convicted of assault and battery may be punished by imprisonment for not more than one year.[37]

In *Commonwealth v. Kaipat,* we held that the crime of assault and battery are alternative lesser included offenses of assault with a dangerous weapon.[38] There a textual comparison of the relevant statutes made it clear that "[e]ach of these charges contains a dispositive set of elements which

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[35] C CMC §3101.
[36] 6 CMC §1201.
[37] 6 CMC §1202.
[38] *Kaipat,* 4 N.M.I. at 303.

is a subset of one of the alternative sets of elements of assault with a dangerous weapon."[39] These statutes contained nearly identical language, with the following exception: "[a]dd to either [assault or assault and battery] the elements of the use of a dangerous weapon and you have the charge of assault with a dangerous weapon."[40]

This is clearly not the case here. As evidenced above, the elements of assault are not a subset of disturbing the peace. Nor are the elements of assault and battery. The crime of assault is committed "if the person unlawfully offers or attempts, with force or violence, to strike, beat, wound, or to do bodily harm to another."[41] Assault and battery is committed "if the person unlawfully strikes, beats, wounds, or otherwise does bodily harm to another, or has sexual contact with another without the other person's consent."[42] The elements constituting disturbing the peace are quite different, for a person commits this crime if he or she "unlawfully and willfully does any act which unreasonably annoys or disturbs another person so that the other person is deprived of his right or her right to peace and quiet, or which provokes a breach of the peace."[43]

Taisacan argues that the elements of disturbing the peace should be read broadly, stating: "[t]he phrase 'any act which unreasonably annoys or disturbs another person so that the other person is deprived of his or her right to peace and quiet, or which provokes a breach of the peace' is a very broad act which includes every crime that breaches peace."[44]

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[39] Id.
[40] Id. at 303-04.
[41] 6 CMC §1201
[42] 6 CMC §1202.
[43] 6 CMC §3101.
[44] Opening Brief of Defendant-Appellant, Neil Sablan Taisacan at 16.

Under this rationale a conviction for nearly every crime would also constitute disturbing the peace, thus rendering a conviction for disturbing the peace useless. Furthermore, "[w]e are to view these statutory provisions with an aim 'to effect the plain meaning of [their] object."[45] Thus, such a broad interpretation of the statutory language as suggested by Taisacan is impermissible and it is evident that assault as well as assault and battery are not lesser included offenses of disturbing the peace.

In addition, the crime of disturbing the peace requires "willful" conduct.[46] Assault and assault and battery under CNMI law must be intentional, but neither offense requires willful conduct.[47] The United States Court of Appeals for the Third Circuit has analyzed similar statutes and likewise held:

> [Disturbing the Peace] involves willful or malicious conduct. An assault in the third degree under the Virgin Islands Code must be intentional, but the offense does not contain this specification of willful or malicious conduct. Thus, an element of the [Disturbing the Peace statute] is not present in the [Assault statute], such that under the Virgin Islands law, Disturbing the Peace is not a lesser included offense of assault with a deadly weapon.[48]

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45 *Kaipat*, 4 N.M.I. at 304 (quoting 6 CMC §104(d)).
46 6 CMC §3101.
47 6 CMC §1201, 1202.
48 *Government of the Virgin Islands v. Parrilla*, 550 F2d 879, 882 (3d Cir. 1977). The court in *Parilla* noted earlier in the opinion that assault with a deadly weapon under the Virgin Islands Code constituttes assault in the third degree. *Id.* at 880 n. 3 (quoting 14 V.I. ANN. §297 (1977).

Furthermore, the offenses have "totally different aggrieved parties (the public as opposed to an individual)..."[49] Within the Commonwealth Code, assault and assault and battery fall under "Crimes Against Persons and Property," while disturbing the peace falls under "Offenses Against Public Peace, Safety and Morals." An analysis of similar statutes was performed in *Parham v. City of Opelika* and there the court held: "[Assault] is catalogued under the heading 'offenses involving danger to the person,' while disorderly conduct falls under 'offenses against public order and safety.' Therefore, we find that disorderly conduct is not a lesser included offense of assault in the third degree."[50] We reach the same conclusion here with regard to assault and assault and battery; they are not lesser included offenses of disturbing the peace.

The Commonwealth incorrectly asserts that a crime (in this case, assault and battery) cannot be a lesser-included offense if it has a higher maximum penalty than the crime it is argued to be included in (in this case, disturbing the peace). "Assault and Battery, 6 CMC §1202 is punishable by imprisonment for not more than one year and a fine not to exceed $1,000. 6 CMC §§ 1202(b), 4101(c). Disturbing the Peace is punishable by imprisonment for not more than six months. 6 CMC §§3101(b), 4101(d). Thus, Assault and Battery is a greater offense than Disturbing the Peace."[51] As stated above, the proper inquiry to determine whether an offense is a lesser-included offense is if its elements "are a subset of the charged offense," not the gravity of the penalty.

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[49] *Parham v. City of Opelika*, 412 So.2d 1268, 1269 (Ala. Crim. App. 1982).

[50] Id.

[51] Appellee's Response Brief on Appeal at 8.

As explained, *supra,* assault and assault and battery are not lesser-include offenses of disturbing the peace. Thus, the trial court's sentencing Taisacan for assault, assault and battery, and disturbing the peace did not constitute a double jeopardy violation.

**C. There was sufficient evidence to convict Taisacan.**

Taisacan argues that there was insufficient evidence to convict him. to make this determination, "[w]e review the sufficiency of the evidence in a criminal case by determining whether, after reviewing the evidence in the light most favorable to the prosecution, any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt."[52]

There was sufficient evidence to convict Taisacan. The victim identified Taisacan at trial as one of the men that attacked him. Furthermore, Taisacan was with the other co-defendants in a poker establishment shortly after the crimes were committed, and their stories did not match up as to how they got there. The car they drove matched the license plate number an eyewitness to the getaway gave to the police. At trial, the victim identified a revolver and a hat, worn by Taisacan, seized from the car. Viewing this evidence in the light most favorable to the prosecution, the trial judge properly convicted Taisacan for the misdemeanor charges.

**V.**

There was no double jeopardy violation because there was only one proceeding. Furthermore, sentencing did not violate the prohibition against double jeopardy because elements of assault and assault and battery are not subsets of

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52 *Oden,* 3 N.M.I. at 191 (citations omitted).

disturbing the peace. There was sufficient evidence to convict Taisacan.

For the foregoing reasons, the trial court's orders are AFFIRMED.

SO ORDERED this 23 day of June, 2005.

[Sgd] MIGUEL S. DEMAPAN
Chief Justice

[Sgd] ALEXANDRO C. CASTRO
Associate Justice

[Sgd] JOHN A. MANGLONA
Associate Justice

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Atttorney for Defendant Neil Taisacan

IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

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|---|---|
| COMMONWEALTH OF NORTHERN MARIANA ISLANDS, | ) CRIMINAL CASE NO. 00-0523A |
| Plaintiff, | ) DEFENDANT NEIL TAISACAN'S ) MOTION TO VACATE GUILTY ) VERDICT AND TO DISMISS |
| v. | ) MISDEMEANOR COUNTS; ) MEMORANDUM OF LAW IN |
| JOAQUIN REYES CRISOSTOMO, BADOBINO SABLAN TAISACAN, and NEIL SABLAN TAISACAN, | ) MOTION, NOTICE OF HEARING ) Date: July 15, 2003 ) Time: 9:00 AM |
| Defendants. | ) Judge: Wiseman |

## MOTION

Defendant Neil Taisacan, by and through his attorney, hereby moves that the court vacate its guilty verdict of assault and battery, assault, and disturbing the peace against Defendant Neil Taisacan, and further moves that these charges be dismissed with prejudice.

This motion is based on the fact that because of the Double Jeopardy Clause of the 5th Amendment to the U.S. Constitution, the court had no jurisdiction to enter a judgment inconsistent with that of the jury.

Dated the 30th day of June, 2003.

[Sgd] REYNALDO O. YANA
Attorney for Defendant Neil Taisacan

**IN THE SUPERIOR COURT**
**OF THE**
**COMMONWEALTH OF THE NORHTERN MARIANA ISLANDS**

| | | |
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| COMMONWEALTH OF THE MARIANA ISLANDS, | ) | Criminal Case No. 00-0523(A) |
| Plaintiff, | ) | **ORDER DENYING MOTION TO VACATE AND DISMISS** |
| v. | ) | |
| JOAQUIN REYES CRISOSTOMO and NEIL SABLAN TAISACAN, | ) | |
| Defendants. | ) | |

**I.**
**INTRODUCTION**

THIS MATTER came before this Court on July 15, 2003 at 1:30 p.m. in room 223A to hear Defendant's Motion to Vacate Judgment of Conviction and Dismiss Misdemeanor Charges. Defendant, Joaquin Crisostomo was represented by Bruce Mailman. Defendant, Neil Taisacan was represented by Reynaldo Yana. The Commonwealth was represented by Kevin Lynch.

**I.**
**FACTS**

On May 30, 2003, a jury found Defendant, Crisostomo, guilty of illegal Possession of Firearm 6 §CMC 2205(a); Possession of a Prohibited Firearm 6 §CMC 2222(e); and Possession of Prohibited Ammunition 6 §2222(e). This Court found Defendants Crisostomo and Neil S. Taisacan guilty of Assault and Battery 6 § CMC 1202(a); Assault 6 § CMC 1202(a); and Disturbing the Peace 6 §

CMC 3101(a). The Defendants filed their respective motions seeking reconsideration, dismissal and a vacating of the judgment.

## III.
## DISCUSSION

Courts are obligated to respect the law's important interest in the finality of criminal judgments. *Massaro v. United States,* 123 S. Ct. 1690, 1692 (2003). This Court will not disturb judgments rendered without a serious basis for challenges to the guilt of the defendant.

Com.R.Crim.P.2 states that the "rules are to be interpreted to provide for the just determinationn of every criminal proceeding, to secure simplicity in procedure and fairrness in administration, and to eliminate unjustifiable expense and delay." Allowing motions to be made outside the rules of criminal procedure violates the spirit of the Commonwealth rules of Criminal Procedure. Even a liberal construction of these rules requires basic adherence to their propositions. Rule 2 of Criminal Procedure does not give the Court authority to grant accuseds' motion for judgment of acquittal after return of a guilty verdict, where the motion is filed even on day outside the time limit prescribed by Rule 29(c) of the Federal Rules of Criminal Procedure, regardless of whether the motion is (1) accompanied by a claim of legal innocence, (2) filed before sentencing, or (3) filed late because of attorney error. *Carlisle v. United States*, 517 U.S. 416, 421 (1996).

The Defendants have filed two separate motions, both essentially seeking the same objective, an overturn of the guilty charges against them. To achieve this objective, the following legal mechanisms were employed: Motion to Reconsider Adjudication of Misdemeanor Counts, Motion to

Dismiss those Counts, and Motion to Vacate Judgment of Conviction and Dismiss Misdemeanor Charges. None of these motion exist within the Commonwealth Criminal Procedure Rules.

The appropriate motions are a motion for acquittal and motion for new trial. Com.R.Crim.P.29(c) and 33.

To allow the Defendants to raise new forms of action borrowed from other bodies of law contravenes the purpose of the criminal procedure rules. The rules exist to protect defendants in criminal actions. Part of that distinction is the importance in adherence to the standards as provided by the criminal procedure rules. The rules of criminal procedure were specifically implemented to avoid common law that used to govern court proceedings and are designed to provide a consistent approach to the trial of federal criminal cases. Piecemeal application of principles outside the designated criminal procedure rules should only be allowed where novel issues are raised for which the rules themselves do not provide the appropriate mechanism to deal with the issues presented. The Defendants state that because the motions proffered are based on the supposition that the misdemeanor counts are void, the motions need not conform to criminal procedure requirements. To arrive at the conclusion that the misdemeanor counts are void, the Defendants rely on the fact that the Jury acquitted the Defendants on the non-bench trial charges. That claim is inherently based on an insufficiency of evidence argument. A trial judge does not abuse discretion in denying defendant's motion for judgment of acquittal where evidence which was properly admitted against defendant and inferences that could be drawn from such evidence are sufficient to support conviction. *United States v. Greene*, 834 F.2d 86 (4th Cir. 1987).

As such, the Defendants' motions conform to the appropriate rules and the guidelines within those rules. Both a motion for judgment of acquittal under Com.R.Crim. P. 29(c) and a motion for a new trial under Com.R.Crim.P. 33 require the filing of the motions within seven (7) days of a return of a guilty verdict.

Defendant Crisostomo filed his *Motion to Reconsider Adjudication of Misdemeanor Counts as to [Defendant]; and to Dismiss Those Counts* on July 8, 2003. Defendant Neil Taisacan filed his *Motion to Vacate Judgment of Conviction and to Dismiss Misdemeanor Charges* on June 30, 2003. The Jury and the Court returned their verdicts on May 29, 2003. Both motions should have been under the appropriate new trial or acquittal designation. Therefore, both motions were to be filed with the court within the seven day time frame allotted by the rules. Both Defendants' motions exceed the time provided for that filing. To grant the motions at this stage of the proceeding would be error.

Defendants also raise a Double Jeopardy issue within their motions that would preclude any filing deadline requirement.

> The Double Jeopardy Clause of the 5th Amendment to the United States Constitution is replicated in Article I, §4(e) of the Commonwealth Constitution. This provision protects against three types of abuse: (1) a second prosecution for the same offense after acquittal; (2) a second prosecution for the same offense after conviction; and (3) multiple punishment for the same offense.

*Commonwealth v. Cabrera,* 1997 MP 4-5 par. 7 (1997)

One of the protections afforded by the double jeopardy clause are at issue in the instant case. First, there was only one trial. The trial contained two separate fact finders, a jury and the Judge, each reviewing different charges. Where separate charges are considered against the same defendant this court is troubled to find a basis for a double jeopardy violation. The Ninth Circuit considered the issue previously stating:

> On appeal to the United States District Court for the Northern Mariana Islands, Appellate Division, Magofna claimed that the judge actually submitted the same assault and battery charge to the jury that was reserved for the judge. He argued that since the jury considered and acquitted him of the same assault and battery charge for which the district court convicted him, his conviction violated the Fifth Amendment's double jeopardy clause. He also asserted that NMI's jury trial statute required all charges to be submitted to the jury if any one charged entitled the defendant to a jury trial.
>
> The appellate division denied his appeal, finding that the judge and jury did not consider the same assault and battery charge. It did not address Magofna's statutory argument.
>
> Magofna then appealed to this court. In a memorandum disposition filed August 2, 1988, 855 F.2d 860, **we affirmed the appellate division's decision finding no**

> **double jeopardy violation.** (emphasis added.)

*Commonwealth v. Magofna*, 919 F.2d 103, 104-105 (9th Cir. 1990).

Based on the separate and differing charges, which contain different elements and potential punishments there can be no double jeopardy violation.

Defendants' Motions are **DENIED**. The judgment of this Court as to both Defendants stands. The judgment of the Jury as to Defendant Crisostomo also stands.

The Sentencing is set for **August 7, 2003 at 9:00 a.m. in Courtroom 223 A.**

**ORDERED** this 31 day of July, 2003.

[Sgd] DAVID A. WISEMAN
Associate Judge

Reynaldo O. Yana
Attorney at Law
P.O. Box 500052
Saipan, MP 96950
Tel. 234-6529

Attorney for Defendant Neil Taisacan

IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

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|---|---|
| COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, Plaintiff, vs. JOAQUIN REYES CRISOSTOMO and NEIL SABLAN TAISACAN, Defendants. | CRIMINAL CASE NO. 00-0523A<br>NOTICE OF APPEAL |

TO THE CLERK OF THE COMMONWEALTH SUPERIOR COURT:

Pursuant to the Rules of the Supreme Court for the Northern Mariana Islands, notice of appeal is hereby given:

NAME OF APPELLANTS: **Neil Sablan Taisacan**
NAME OF JUDGE: **David A. Wiseman**
JUDGMENT APPEALED FROM: **Judgment of Conviction As to Defendant Neil Sablan Taisacan issued on May 30, 2003 and Sentencing issued on August 8, 2003 and Order Denying Defendants' Motion To Vacate and Dismiss entered on July 31, 2003.**

**NAME OF COURT TO WHICH JUDGMENT IS APPEALED:** Supreme Court of the Commonwealth of the Northern Mariana Islandss.

Defendant Neil Sablan Taisacan is proceeding in forma pauperis in this appeal as orally ordered by Judge Wiseman on August 7, 2003.

Dated this 15th day of August, 2003.

[Sgd] REYNALDO O. YANA
Attorney for Defendant Neil Taisacan